

**Town of North Andover  
Board of Health**

**Regulations Affecting Smoking in Certain Places and Youth Access to  
Tobacco**

The following regulations shall replace Section 6, Section 7, Section 8, Section 9, Section 10, and Section 12.F the "Town of North Andover Board of Health Regulations Affecting Smoking in Certain Places and Youth Access to Tobacco" passed by the North Andover Board of Health on January 22, 1998.

**Sale of Tobacco Products to Minors**

**A. Statement of Purpose:**

Whereas there exists conclusive evidence that tobacco smoke causes cancer, respiratory and cardiac diseases, negative birth outcomes, irritations to the eyes, nose and throat; and whereas more than ninety percent (90%) of all smokers begin smoking before the age of eighteen (18) (See, "Preventing Tobacco Use Among Young People," Surgeon General's Report, 1994); and whereas an estimated three thousand (3,000) minors begin smoking every day in the United States (See, "Cancer Facts & Figures 1993," American Cancer Society); and whereas the U.S. Department of Health and Human Services has concluded that nicotine is as addictive as cocaine or heroin; and whereas despite state laws prohibiting the sale of tobacco products to minors, access by minors to tobacco products is a major problem; now, therefore it is the intention of the North Andover Board of Health to curtail the access of tobacco products by minors.

**B. Authority:**

This regulation is promulgated pursuant to the authority granted to the North Andover Board of Health by Massachusetts General Laws Chapter 111, Section 31 that "Boards of Health may make reasonable health regulations."

**C. Definitions:**

For the purpose of this regulation, the following words shall have the meanings respectively assigned to them by this paragraph.

**Business Agent:** An individual who has been designated by the owner or operators of any establishment to be the manager or otherwise in charge of said establishment.

**Employee:** Any individual who performs services for an employer.

**Employer:** Any individual, partnership, association, corporation, trust or other organized group of individuals, including the Town of North Andover or any agency thereof, which uses the services of one (1) or more employees.

**Minor:** Any individual who is under the age of eighteen (18).

**Permit holder:** An owner or operator of any establishment engaged in the sale of tobacco products that applies for and receives a tobacco sales permit, or his or her business agent.

**Person:** An individual, employer, business agent, employee, retail store manager or owner, or the owner or operator of any establishment engaged in the sale of tobacco products.

**Self-Service Display:** Any display from which customers may select a tobacco product without assistance from an employee or store personnel, excluding vending machines.

**Tobacco Product:** Cigarettes, cigars, chewing tobacco, pipe tobacco, bidis, snuff or tobacco in any of its forms.

**Vending Machine:** Any automated or mechanical self-service device, which upon insertion of money, tokens or any other form of payment, dispenses cigarettes or any other tobacco product.

#### **D. Tobacco Sales to Minors Prohibited:**

1. No person shall sell tobacco products or permit tobacco products to be sold to a minor, or not being the minor's parent or legal guardian, give tobacco products to a minor.
2. In conformance with and in addition to Massachusetts General Law, Chapter 270, Section 7, a copy of Massachusetts General Laws, Chapter 270, Section 6, shall be posted conspicuously by the owner or other person in charge thereof in the shop or other place used to sell tobacco products at retail. The notice shall be provided by the Massachusetts Department of Public Health and made available from the North Andover Board of Health. Such notice shall be at least 48 square inches and shall be posted at the cash register which receives the greatest volume of tobacco product sales in such a manner so that it may be readily seen by a person standing at or approaching the cash register. Such notice shall directly face the purchase and shall not be obstructed from view or placed at a height of less than four (4) feet or greater than nine (9) feet from the floor. For all other cash registers that sell tobacco products, a notice shall be attached which is no smaller than nine (9) square inches, which is the size of the sign provided by the Massachusetts Department of Public Health. Such notice must be posted in a manner so that it may be readily seen by a person standing at or approaching the cash register. Such notice shall directly face the purchaser and shall not be obstructed from view or placed at a height of no less than four (4) feet or more than nine (9) feet from the floor.
3. No person shall sell or permit the sale of tobacco products unless the location at which the tobacco products are available for purchase is posted with a notice which is clearly visible to anyone purchasing such products which states: "It is against state law and local regulation to sell tobacco to minors." "Report violations to the North Andover Board of Health at (978)688-9540." Such notice shall be provided by and available from the North Andover Board of Health.

4. **Identification: Each person shall verify by means of government-issued photographic identification containing the bearers date of birth that the purchaser is 18 years old or older. In addition to state law 940 CMR**

**21.04(2)(b), which requires verification for anyone who appears 27 years of age or older, the North Andover Board of Health recommends verification for all purchasers of tobacco products, regardless of age."**

5. All retail sales of tobacco must be face-to-face between the seller and the buyer.

**E. Tobacco Sales Permit:**

1. No person shall sell or otherwise distribute tobacco at retail within the town of North Andover without first obtaining a tobacco sales permit issued annually by the North Andover Board of Health.
2. As part of the application process, the applicant will be provided with the North Andover Board of Health regulation. Each applicant is required to sign a statement declaring that the applicant has read said regulation and that the applicant is responsible for instructing any and all employees who will be responsible for tobacco sales regarding both state laws regarding the sale of tobacco and this regulation.
3. Each applicant is required to provide proof of a current tobacco sales license issued by the Massachusetts Department of Revenue before a tobacco sales permit can be issued.
4. The fee for a tobacco sales permit shall be determined by the North Andover Board of Health. All such permits shall be renewed annually on July 1<sup>st</sup>.
5. A separate permit is needed for each retail establishment selling tobacco.
6. Each tobacco sales permit shall be displayed at the retail establishment in a conspicuous place.
7. No tobacco sales permit holder shall allow any employee to sell cigarettes or other tobacco products until such employee reads this regulation and state laws regarding the sale of tobacco and signs a statement, a copy of which will be placed on file in the office of the employer, that he/she has read the regulation and applicable state laws.
8. A tobacco sales permit is non-transferable, except a new permit will be issued to a retailer who changes location.
9. Issuance of a tobacco sales permit shall be conditioned on an applicant's consent to unannounced, periodic inspections of his/her retail establishment to ensure compliance with this regulation.

**F. Free Distribution:**

No person shall distribute, or cause to be distributed, any free samples of tobacco products. No tobacco sales permit holder shall redeem or honor any coupons or vouchers redeemable for tobacco or tobacco products within North Andover.

**G. Out-of-Package Sales:**

No person may sell or cause to be sold or distribute or cause to be distributed, any cigarette package that contains fewer than twenty (20) cigarettes, including single cigarettes.

**H. Self Service Displays:**

All self-service displays of tobacco products are prohibited. All humidors including, but not limited to, walk-in humidors must be locked.

**I. Tobacco Vending Machines:**

All tobacco vending machines are prohibited.

**J. Violations:**

1. It shall be the responsibility of the permit holder and/or his or her business agent to ensure compliance with all sections of this regulation pertaining to his/her place of business. Any person who violates this regulation shall receive:
  - a. In the case of a first violation, a fine of one hundred dollars (\$100).
  - b. In the case of a second violation within 24 months of the date of the first violation, a fine of two hundred dollars (\$200) and the permit shall be suspended for 7 consecutive business days.
  - c. In the case of three or more violations within a 24 month period from the date of the first offense, a fine of three hundred dollars (\$300) and the permit shall be suspended for 30 consecutive business days.
2. **In the case of a violation to Section D.1 “Tobacco Sales to Minor”, the following will apply:**
  - a. **If an employee of the licensed establishment violates Section D.1 and the employer provides proof of compliance to Section E.7 (proof of signed statement from employee) the Board of Health Agent may issue a fine not to exceed \$50.00 to the employee who committed the tobacco sale violation.**
3. The North Andover Board of health shall provide notice of the intent to suspend a tobacco sales permit, which notice shall contain the reasons therefore and establish a time and date for a hearing which date shall be no earlier than seven (7) days after the date of said notice. The permit holder shall have an opportunity to be heard at such hearing and shall be notified of the Board of Health’s decision, and the reasons therefore in writing. The North Andover Board of Health, after a hearing, may suspend the tobacco sales permit. All tobacco products shall be removed from the retail establishment upon suspension of the tobacco sales permit. Failure to remove all tobacco products shall constitute a separate violation of this regulation.
4. Any permit holder who does not pay the assessed fine within twenty-one days from fine issuance may be subject to criminal proceedings.

**K. Non-Criminal Disposition:**

Whoever violates any provision of this regulation may be penalized by the non-criminal method of disposition as provided in General Laws, Chapter 40, Section 21D or by filing a criminal complaint at the appropriate venue.

Each day any violation exists shall be deemed to be a separate offense.

**L. Enforcement:**

Enforcement of this regulation shall be by the Board of Health of the Town of North Andover or its designated agent(s).

Any citizen who desires to register a complaint pursuant to the regulation may do so by contacting the Board of Health of the Town of North Andover or its designated agent(s) and the Board shall investigate.

**M. Severability:**

If any provision of these regulations is declared invalid or unenforceable, the other provisions shall not be affected thereby but shall continue in full force and effect.

**N. Effective Date:**

This regulation shall take effect on January 1, 2002.

**Revisions to Sections: D.4 and J.2 were approved by the Board of Health on August 19, 2004, and signed by the Board of Health on October 28, 2004.**

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Cheryl Barczak, Clerk

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Date of Signature

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Jonathan Markey, Chairman

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Date of Signature

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Thomas Trowbridge, D.D.S., M.D., Member

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Date of Signature

**Town of North Andover  
Board of Health - As of: 1998  
Regulations Affecting Smoking in Certain Places  
And  
Youth Access to Tobacco  
Rationale/Purpose**

There exists conclusive evidence that tobacco smoke causes cancer, respiratory diseases, cardiovascular disease, negative birth outcomes, as well as irritations to the eyes, nose, and throat. Numerous studies have found that tobacco smoke is a major contributor to indoor air pollution, and that breathing secondhand smoke is a cause of disease in healthy nonsmokers. Both smokers and those exposed to secondhand smoke are at risk. At special risk are elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease. It is the opinion of the Board of Health that nonsmokers should not be involuntarily exposed to cigarette smoke.

Further, the Board of Health finds cigarette smoking and other tobacco use by minors to be a continuing problem with grave public health consequences. More than 90% of all smokers begin smoking before the age of eighteen (the legal age to purchase cigarettes in the Commonwealth) and an estimated 3,000 minors begin smoking every day in the United States. In recognition of the US Surgeon General's conclusion that nicotine is as addictive as cocaine or heroin, there is an important health need to curtail the easy access of minors to cigarettes and other tobacco products through strict enforcement of the state law prohibiting sales to minors, M.G.L. Chapter 270, Section 6. Therefore, these regulations are adopted pursuant to Massachusetts General Laws Chapter 111, Section 31, as reasonable health regulations designed to protect and improve the health of all those who live and work in the Town of North Andover.

**Section 1**                      **Definitions**

- a. Bar: means an establishment which is primarily dedicated to the serving of alcoholic beverages and in which the service of food is only incidental to the consumption of such beverages. This does not include the lounge or bar service areas of a foodservice establishment.
- b. Business: means any sole proprietorship, partnership, joint venture, corporation, or other business entity formed for profit-making purposes, including retail establishments where goods or services are sold as well as professional corporations and other entities where legal, medical, dental, engineering, architectural or other professional services are delivered.
- c. Designated Smoking Area: means the area, designated by the proprietor, manager, owner or other person(s) of authority, in which smoking is permitted. Such areas shall be designated so as to minimize exposure of nonsmoking patrons and /or employees.
- d. Employee: means any person who is employed by any employer for direct or indirect monetary wages, or profit, and any person who volunteers his or her services for a non-profit entity.

h. Employer: means any individual, partnership, association, corporation, trust or other organized group of individuals including the Town of North Andover, or any agency thereof, which regularly uses the services of one (1) or more employees.

i. Enclosed: means a space bounded by walls with a door and under a roof.  
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j. Self Service Display: means any display of cigarettes or tobacco products which is not attached to, or on top of, a checkout counter, or where distribution of the tobacco products is not directly controlled by an employee.

k. Food Service Establishment: means any place in which food is prepared for service with or without charge including but not limited to any restaurant, coffee shop, cafeteria, luncheonette, short-order cafe, pizza shop, donut shop, grille, tea room, sandwich shop, bar, tavern, or lounge.

l. Indoor Sports Arena: means any sports pavilion, gymnasium, health spa, boxing arena, swimming pool, roller or ice rink, bowling alley, or other similar place where members of the general public assemble to engage in physical exercise, participate in athletic competition or witness sports event.

m. Minor: means any person under eighteen years of age.

n. Municipal Building: For the purpose of this regulation, Municipal Buildings means the Town Hall, Town Offices, Library, Police/Fire Stations, Schools and School Administration Building, Water Treatment Plant, Department of Public Works and all Municipal Maintenance Buildings, and any and all facilities owned and operated by the town.

o. Municipal Employee: means any person who is employed by the Town of North Andover.

p. Nonsmoking Area: means any area that is designated and posted by the proprietor, owner, or person in charge as a place where smoking by patrons, employees or others is prohibited.

q. Public Place: means an enclosed, indoor area opened to, and used by, the general public, including but not limited to the following: licensed childcare location, educational facilities, elevators accessible to the public, clinics and nursing homes, inns, hotel and motel lobbies, stairwells, halls, entranceways, public restrooms, libraries, municipal buildings, museums, retail food establishments, indoor sports arenas, theaters, auditoriums, public transit facilities not owned by the Commonwealth of Massachusetts or United States Government, and any rooms or halls when used for public meetings. A room or hall used for a private social function in which the sponsor of the private function, and not the owner or proprietor, has control over the seating arrangements shall not be construed as a public place.

r. Restaurant: means any establishment serving food for consumption on the premises which maintains tables for the use of its customers. This includes cafeterias in the workplace.

s. Retail Food Establishment: means any establishment commonly known as a supermarket, grocery store or convenience store in which the primary activity is the sale of food items to the public for consumption off the premises.

t. Retail Store: means any establishment selling goods, articles or personal services to the public.

u. Seating Capacity: means the capacity designated on the occupancy permit.

v. Service Line: means any indoor line at which one (1) or more persons are waiting for, or receiving service of any kind, whether or not such service involves the exchange of money.

w. Smoking: means inhaling, exhaling, the lighting of, or having possession of, any lighted cigar, cigarette, pipe or other tobacco product.

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x. Tobacco: means cigarettes, chewing tobacco, snuff or tobacco in any of its other forms.

y. Tobacco Vending Machines: means a device which dispenses tobacco products by self-service or by remote control.

z. Workplace: means any area within a structure, or portion thereof, in which one (1) or more employees perform services for their employer. It also includes employee lounges, restrooms, conference rooms, hallways, stairways and entrance ways.

## Section 2      Application of Article to Town-Owned Facilities and Municipal Buildings

A. Smoking of cigarettes and the use of other tobacco products shall not be permitted in any Municipal building in the Town of North Andover, or any enclosed facility owned by the Town of North Andover.

B. Smoking shall not be permitted in municipal vehicles where smoking is not otherwise prohibited by other applicable laws.

## Section 3      Prohibition on Smoking in Public Places

A. Except as otherwise excluded in Section 5 herein, smoking shall be prohibited in all enclosed public places within the Town of North Andover including, but not limited to the following:



- of North
1. Elevators.
  2. Buses, taxicabs, and other means of public transit under the authority of the Town Andover, and ticket, boarding, and waiting areas of public transit depots.
  3. Restrooms.
  4. Service Lines.
  5. Retail Stores. The prohibition on smoking in public places shall apply to retail stores doing business with the general public. Smoking areas may be designated in portions of said stores not open to the public and in stores whose business is exclusively dedicated to the sale of tobacco products.
6. Retail Food Establishments. The prohibition on smoking in public places shall apply to retail food establishments doing business with the general public. Smoking areas may be designated in portions of said stores not open to the public.
7. All areas available to and customarily used by the general public in all businesses and non-profit entities patronized by the public, including, but not limited to, professional offices and other offices, banks, laundromats, hotels, and motels.
  8. Restaurant/Foodservice Establishments. The prohibition on smoking in public places shall apply to all restaurants and foodservice establishments.

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indicating  
review by

Each foodservice establishment shall be required to keep an updated seating plan, the designated non-smoking area, on file. Such seating plan shall be available for the Board of Health.

(consisting of  
bar across  
prohibited by

“Smoking” or “No Smoking” signs, or the international “No Smoking” symbol a pictorial representation of a burning cigarette enclosed in a red circle with a red it) shall be conspicuously posted in every area where smoking is permitted or these regulations.

9. Public areas galleries, libraries, and museums and convention halls, when open to the public.

10. Any building not open to the sky which is primarily used for exhibiting any motion picture, stage, drama, lecture, musical recital, or other similar performance, except when smoking is part of a stage production.

11. Indoor sports arenas.

12. Every room, chamber, place of meeting or public assembly, including school buildings under the control of any board, council, commission, committee, including joint committees, or agencies of the Town of North Andover or any political subdivision of the Commonwealth of Massachusetts during such time as a public meeting is in progress, to the extent such place is subject to the jurisdiction of the Town of North Andover.

13. Waiting rooms, lobbies, hallways, wards, restrooms, and private or semiprivate rooms of health facilities including but not limited to hospitals, clinics, physical therapy facilities, doctors' offices, and dentists' offices.

14. Lobbies, hallways, and other common areas in apartment buildings, condominiums, retirement facilities, nursing homes, and other multiple-unit residential facilities.

15. Lobbies, hallways, and other common areas in multiple-unit commercial facilities.

16. Polling places.

B. Notwithstanding any other provision of this section, any owner, operator, manager, or other person who controls any establishment or facility described in this section may declare that entire establishment or facility as a nonsmoking establishment.

C. Smoking areas may be designated in museums, clinics, health care facilities, nursing homes, long-term care facilities, auditoriums, indoor sporting arenas, hotel and motel lobbies, and theaters provided that comparable nonsmoking areas of sufficient size and capacity are available. Physical barriers and/or ventilation systems shall be used to segregate smoking areas from nonsmoking areas. Hallways, elevators, entranceways, stairwells, restrooms, and waiting areas in all the above facilities may not be designated as smoking areas. No place governed by these regulations shall be designated as a smoking areas in its entirety. Nothing in this section shall be construed as to require the creation of a smoking area. Areas designated as smoking areas shall be conspicuously marked.

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A. It shall be the responsibility of employers to provide smokefree areas for nonsmoking employees within existing facilities to the maximum extent possible.

B. Within 90 days of the effective date of this regulation, each employer having an enclosed workplace located within the Town of North Andover shall adopt, implement, make known

and maintain a written smoking policy which shall contain at a minimum, the following requirements:

1. Any employee in a workplace shall have the right to designate his or her work area as a nonsmoking area and to post the same with an appropriate sign or signs, to be provided by the employer.

C. Smoking shall be prohibited in all common work areas in a place of employment, unless every person who works in that area agrees in writing that a smoking area will be designated.

3. Prohibition of smoking in auditoriums, classrooms, conference and meeting rooms, elevators, hallways, medical facilities, lounges, cafeterias, and restrooms.

4. At the written request of one or more employees, an employer may, but is not required to, designate an area in the immediate vicinity of the employee's usual work area as a smoking area, if the employer finds that such a smoking area will not expose nonsmoking employees or the public to any significant amount of smoke. Upon the same request and finding, an employer may also make other reasonable accommodation to smoking employees, including provision of a separate employee lounge for smoking, no larger in floor area or seating capacity than the employee lounge for nonsmoking employees. In areas where smoking is permitted, physical barriers or separate rooms shall be used whenever possible to minimize smoke adjacent to nonsmoking areas. Ventilation shall be in compliance with Massachusetts state laws and accepted rules governing indoor ventilation.

5. In designating smoking and nonsmoking areas, each employer shall reasonably accommodate smokers and nonsmokers, and make a reasonable effort to assign employees to work in areas with employees who have similar smoking preferences. If an accommodation which is satisfactory to all affected employees cannot be reached, the preferences of the nonsmoking employee shall prevail and the employer shall prohibit smoking in that portion of the workplace.

C. The employer shall upon request provide a written copy of the policy required in (B) above, to any employee or prospective employee of the employer. Upon request, the employer shall provide a written copy of the policy to the Town of North Andover Board of Health or its agents.

D. Any employee aggrieved by the smoking policy, or any portion thereof, may give written notice of such objection to the employer. Within five (5) working days of receipt of such notice, the employer shall initiate a reasonable and diligent attempt to mediate the employee's objection by following any grievance procedure set forth in the policy, or by informal conference. A decision must be rendered by the employer within twenty (20) workdays after the date on which the objection was filed.

E. Any party to a complaint proceeding undertaken pursuant to the provisions of section (4)(D) who is aggrieved by the decision rendered by the employer in such proceeding may seek relief therefrom by

any court of competent jurisdiction as provided by the laws of the Commonwealth of Massachusetts.

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#### Section 4                      Regulation of Smoking in Workplaces

A complaint may also be filed with an office of OSHA (the Occupational Safety & Health Administration.)

F. In the case of Municipal Employees, where the employer is the Town of North Andover, if the employer's decision in response to an objection filed under (D) above, does not satisfy the objecting municipal employee, such municipal employee may file a complaint with the Town of North Andover Board of Health. The Board of Health shall promptly thereafter investigate the municipal employee's complaint. Such investigation may include a hearing before the members of the Town of North Andover Board of Health, or a designee, if a hearing is requested by either the municipal employee or the employer, and/or the Board of Health deems a hearing to be in the public interest. The Town of North Andover Board of Health shall determine whether the complaint is reasonable, giving due consideration to the protection of the public health and to the reasonable needs of the Town of North Andover. In determining the reasonableness of a complaint, the health concerns of nonsmokers shall take precedence.

G. If the Town of North Andover Board of Health determines that a complaint is reasonable, the Town of North Andover shall be ordered to take such steps as are necessary to provide reasonable protection to the health of the complaining municipal employee. The employer shall, without delay, carry out any such order provided, however, that the employer shall not be required to make substantial structural changes in the workplace.

H. Any party to a complaint proceeding undertaken pursuant to the provisions of section (4)(G) who is aggrieved by the order of the Board of Health in such proceeding may seek relief there from by any court of competent jurisdiction as provided by the laws of the Commonwealth of Massachusetts.

#### Section 5                      Exclusions

A. Notwithstanding any other provision of this regulation to the contrary, the following areas shall not be subject to the smoking restrictions of this regulation:

1. Bars.
2. Private homes, residences and automobiles.
3. Stores exclusively dedicated to the sale of tobacco products.
4. Restaurants, hotel and motel conference or meeting rooms, and public and private assembly rooms while these places are being used for private functions.

5. Limousines under private hire by an individual or corporation.

B. Notwithstanding any other provision of this section, any owner, operator, manager, or other person who controls any establishment or facility described in this section may declare that entire establishment or facility as a nonsmoking establishment.

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## Section 6 Tobacco Sales To Minors Prohibited

A. In conformance with Massachusetts General Law Chapter 270, Section 6, no person shall sell cigarettes, chewing tobacco, snuff or tobacco products, in any of its forms, to any person under the age of eighteen (18) years old, or not being his/her parent or guardian, give cigarettes, snuff or tobacco products, in any of its forms, to any person under the age of eighteen (18) years.

B. Posting of Signs - In conformance with Massachusetts General Law Chapter 270, Section 7, a copy of Massachusetts General Laws Chapter 270, Section 6, shall be posted conspicuously by the owner or other person in charge thereof in the shop, or other place, to sell cigarettes at retail. The notice to be posted shall be that notice provided by the Massachusetts Department of Public Health. Such notice shall be at least 48 square inches and shall be posted at all cash registers where tobacco products may be purchased. They shall be posted in such a manner so that they may be readily seen by a person standing at, or approaching, the cash register. Such notice shall directly face the purchaser and shall not be obstructed from view, or placed at a height of less than four (4) feet, or greater than nine (9) feet from the floor.

C. Store owners, managers, or other person(s) in charge where cigarettes, chewing tobacco and other tobacco products are sold shall conspicuously post and maintain signs that proof of age is required to purchase cigarettes or tobacco products. At a minimum, signs shall be posted at every cash register

D. Identification Required - All employees selling cigarettes, chewing tobacco or other tobacco products in any form will positively establish the purchaser's age as eighteen (18) years or older, unless the seller has some other conclusive basis for determining the buyer is over the age of eighteen (18). No employee shall sell cigarettes or other tobacco products to a person under eighteen (18) years of age who has a note from an adult requesting such sale.

E. No person, firm, corporation, establishment, or other entity shall redeem from a minor, any coupons or vouchers redeemable for tobacco or tobacco products for free, within the Town of North Andover.

## Section 7 Tobacco Sales and Distribution

A. No person, firm, corporation, establishment, or agency shall sell cigarettes, chewing tobacco products or other tobacco products unless their purchase is controlled by an employee of the establishment. Self-service displays of cigarettes, chewing tobacco or other tobacco products from which individual packages and/or cartons may be selected by the customer shall not be permitted.

B. No person, firm, corporation, establishment, or agency selling cigarettes, chewing tobacco, snuff or tobacco products, in any form, shall allow anyone to sell or distribute tobacco products until the employee has read these regulations and the state laws pertaining to the sale or distribution of tobacco products and has signed an affidavit, supplied by the Board of Health, to be kept on file at the establishment. The employee's signature will verify that applicable state and local regulations have been read and understood. This file must be retained for the length of each individual's employment and must be made available for the inspection by the Board of Health or its agent(s), or personnel of the Inspection Services Department.

C. Out-of Package Sale Prohibited - It is unlawful to sell cigarettes out of the manufacturer's package with required health warnings. Sale or distribution of tobacco products in any form other than the original factory-wrapped package is prohibited.

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D. Free Distribution/Free Samples Prohibited - No person or entity shall knowingly distribute, or furnish without charge, or cause to be furnished or distributed without charge, cigarettes or other tobacco products, in any public place, or at any event open to the public, except in retail tobacco stores in the Town of North Andover.

## Section 8 Tobacco Vending Machines

A. Within six (6) months of adoption of this regulation, no person, firm, corporation, establishment, or agency shall install or maintain a vending machine to distribute or sell tobacco products in the Town of North Andover unless:

1. The vending machine is located in a bar, or an area where minors are currently excluded by law, and is located twenty (20) feet or more from any entrance or exit.
2. All vending machines allowed under this section shall be equipped with a lock-out device approved by the Board of Health. Said device shall lock out sales from vending machines unless an employee releases the locking mechanism. The release mechanism must not allow continuous operation of the vending machine and must not be accessible to customers. Vending machines should be posted with a sign stating that the machine is equipped with a lock-out device and identifies the individual to contact to purchase cigarettes from the machine.

B. All vending machines allowed under Section 8 (A) shall display a conspicuous sign stating that it is illegal for minors to purchase cigarettes and other tobacco products.

## Section 9

### Tobacco Sales Permit Required

A. After ( July 1, 1995), it shall be unlawful for a retailer to sell cigarettes or other tobacco products, unless the retailer holds a valid Tobacco Sales Permit from the Board of Health of the Town of North

Andover for each location in which tobacco products are sold. After (July 1, 1995), it shall be unlawful for any person, firm, corporation, establishment, or agency to install, maintain, or operate a vending machine without a valid Vending Machine Permit from the Board of Health of the Town of North Andover for each machine from which tobacco products are sold.

B. Fee for Permit - There shall be a two dollar fee for a Tobacco Sales Permit or Vending Machine Permit.

C. Non-transferability - A Tobacco Sales Permit or Vending Machine Permit is non-transferable, except a new permit will be issued to a tobacco retailer who changes location.

D. The terms of the Tobacco Sales Permit/Vending Machine Permit shall be one year. The Board of

Health may extend a Tobacco Sales Permit or Vending Machine Permit provided that the permittee requests an extension in writing at least thirty (30) days prior to the expiration of the permit. The Board of Health may deny the request for an extension in the event that the permittee has violated a provision of the permit or these regulations.

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## Section 10

### Suspension and Revocation of Tobacco Sales/Vending Machine Permit

A. In addition to the monetary penalties set forth in Section 12.B, a permit may be suspended after notice and opportunity to be heard as follows:

1. In the case of a first violation of these regulations, the permittee shall be fined not less than, nor more than fifty (\$50) dollars and shall be notified in writing of penalties levied for further violations and the permit may be suspended for not less than, nor more than seven (7) days.

2. In the case of a second violation of these regulations, the permittee shall be fined not less than, nor more than one hundred (\$100) dollars and the permit may be suspended for not less than ninety consecutive business days nor more than six months.

3. In the case of three or more violations of these regulations, the permittee shall be fined not less than, nor more than two hundred fifty (\$250) dollars and the permit may be revoked or may be suspended for not less than nine months nor more than eighteen months.

## Section 11

### Variance

A. The Board of Health may vary the application of any provision of these regulations with respect to any particular case when the Board of Health finds the enforcement thereof would do manifest injustice and when the same amount of environmental and health protection may be achieved, provided, that the decision of the Board of Health is not in conflict with the spirit of these regulations.

B. Every request for a variance shall be made in writing and shall state the specific variance sought and the reasons thereof.

C. Any variance granted must be in writing with a copy available to the public at all reasonable business hours in the office of the Town Clerk and the office of the Board of Health. Any variance granted must be posted on the premises in a prominent location for the duration that the variance is in effect.

D. In areas where smoking is permitted, physical barriers, separate rooms, and ventilation systems shall be used to eliminate the presence of smoking by products in nonsmoking areas. Adequate ventilation shall be provided in compliance with Massachusetts state laws, SHRAE Standards, and accepted rules governing indoor ventilation.

All bars which are located or have seats in the same room as the restaurant shall ensure that ventilation systems are of sufficient design and capacity to draw tobacco smoke generated in this area, away from the restaurant. This air may not be recirculated within the building or mixed with general dilution ventilation for the building. In all cases, the Board of Health or Agent, must approve the location of the bar area.

The nonsmoking area shall be one integral area and shall not be located between two smoking areas.

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## Section 12

### Penalties/Enforcement

A. Any person who smokes in a non-smoking area shall be subject to a fine not exceeding twenty five dollars (\$25.00) for each violation.



B. Any proprietor or other person in charge of a place covered by this regulation, or in charge of the operations of a vending machine, who fails to comply with this regulation shall be subject to:

1. a fine not exceeding fifty (\$50.00) dollars for a first violation and/or:
2. a fine not exceeding one hundred dollars (\$100.00) for a second violation of this regulation within one (1) year and/or:
3. A fine not exceeding two hundred and fifty (\$250.00) dollars for each additional violation within one (1) year and/or:
4. suspension of any license issued by the Board of Health for three or more violations, by one or more persons, at any one location, within one (1) year. Such suspension shall not exceed a period of seven (7) days.

C. In addition to the remedies provided by Section 12(A) and 12(B), the Board of Health or any person aggrieved by the failure of the proprietor or other person in charge of a place covered by these regulations to comply with any provision of this subsection may apply for injunctive relief to enforce the provisions of this subsection in any court of competent jurisdiction.

D. Any person aggrieved by the willful failure or refusal to comply with these regulations in any municipal building may complain, in writing, to the Board of Health. The Board of Health, or its agent, shall respond to the complaint, in writing, within twenty (20) working days, citing the results of its investigation into the complaint and any action taken to enforce the provision of these regulations.

E. In addition to other remedies and penalties as may be permitted by law and this regulation, violations of this regulation and penalties listed in Section 12(A) and (B) may be subject to non-criminal disposition pursuant to M.G.L. Chapter 40, Section 21D and pursuant to Section 1.6 of the Town of North Andover General By-laws. All agents of the Board of Health including all inspection personnel administrator, inspectors, tobacco control program director, tobacco control program assistant director, fire or police personnel may be designated by the Board of Health to be enforcing for the purpose of this regulation.

F. Compliance monitoring of this regulation and its requirements may be enforced through periodic inspection. Inspections may include the attempted purchases of tobacco products by minors under the supervision of an agent of the enforcing authority. Such an inspection shall not be construed as "entrapment".

### Section 13                      Non Retaliation

A. No person or employer shall discharge, refuse to hire, or in any manner retaliate against any employee or applicant for employment because such employee or applicant exercises any right to a smoke free environment afforded by this ordinance.

Section 14

Other Applicable Laws

A. This article shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

Section 15

Severability

A. Each provision of this regulation is construed as separate to the extent that if any section, item, sentence, clause or phrase is determined to be invalid for any reason, the remainder of this regulation shall continue in full force and effect.

Section 16

Effective Date

September 1, 1995

The North Andover Board of Health adopted these Regulations at a duly called meeting called and held on April 27, 1995.

Change Date

January 22, 1998

The North Andover Board of Health adopted the changes to the regulation at a duly called meeting held on January 22, 1998.

Board of Health

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Gayton Osgood, Chairman

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Dr. Francis MacMillan, MD, Member

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Dr. John Rizza, DMD, Member

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Sandra Starr, R.S., Health Administrator

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